

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**PROFESSIONAL MEDICAL
TRANSPORT, INC.**

and

**Cases 28-CA-023399
28-CA-060435
28-CA-061218
28-CA-062824**

**INDEPENDENT CERTIFIED EMERGENCY
PROFESSIONALS OF ARIZONA, LOCAL #1**

**ACTING GENERAL COUNSEL'S
BRIEF IN SUPPORT OF CROSS-EXCEPTIONS**

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Counsel for the Acting General Counsel (General Counsel), pursuant to Section 102.46(e) of the Board's Rules and Regulations, files the following Brief in Support of Cross-Exceptions to the Decision of Administrative Law Judge Lana Parke, [JD(SF) 49-11] (ALJD), issued on December 20, 2011, in the above captioned cases.¹ Under separate cover, General Counsel also files with the Board on this date an Answering Brief to Respondent's Exceptions. It is respectfully submitted that in all respects, other than what is excepted to herein, the findings of the Administrative Law Judge (ALJ) are appropriate, proper, and fully supported by the credible record evidence.

The ALJ found that Respondent committed numerous and serious unfair labor practices. More specifically, the ALJ found that Respondent violated Section 8(a)(1), (3), and (4) of the Act by issuing written warnings to employees, placing an employee on administrative leave, and

¹ Professional Medical Transport, Inc. is referred to as Respondent. The Independent Certified Emergency Professionals of Arizona, Local No. 1, is referred to as Union. References to the ALJD show the applicable page number. "Tr. ___" refers to pages of the transcript from the hearing held October 11 through October 14, 2011. "GCX ___" refers to exhibits introduced by General Counsel at the hearing. "RX___" refers to exhibits introduced by Respondent at the hearing. "UX___" refers to exhibits introduced by the Union at the hearing. All dates are in 2011, unless otherwise noted.

demoting, suspending and transferring employees. (ALJD at 15-16) The ALJ found that Respondent violated Section 8(a)(5) of the Act by unilaterally shutting down an ambulance unit, refusing to provide relevant and necessary information to the Union, and abrogating a provision in a settlement agreement. (ALJD at 17-19) The ALJ also found that Respondent engaged in independent violations of Section 8(a)(1) by threatening employees with discipline and unspecified reprisals, informing employees they could not take concerted complaints to the Human Resources Department, and limiting employees' entitlement to Union representation in disciplinary interviews. (ALJD at 13-15)

I. BACKGROUND

A. Respondent's Operations

Respondent is a private emergency medical transportation company that provides both emergency and general ambulance transportation through various contracts with municipalities and private businesses throughout the Phoenix metropolitan area. (GCX 37) Respondent has two types of operations: 911 Operations and General Transport. Respondent's 911 Operations, which are managed by Chief Executive Officer for 911 Operations Pat Cantelme (Cantelme), provide medical transportation and care in emergency situations. (Tr. 37, 101) General Transport Operations, managed by General Transport Manager Wayne Clonts (Clonts), transport patients in non-emergency situations to hospitals, assisted-living centers, and nursing homes.

B. History of the Parties' Bargaining Relationship

1. Recognition of the Union

On July 7, 2006, pursuant to a recognition agreement, Respondent recognized the Union as the exclusive collective-bargaining representative of the following unit (the Unit):

All full-time paramedics, EMT's, IEMT's, and registered nurses, but excluding administrative staff individuals, support services, personnel not directly operating in the field as an EMS provider, guards, office clerical and supervisors as defined under the Act. (GCX 35)

The Union's president, from its inception, has been Joshua Barkley (Barkley), who also works for Respondent as a full-time paramedic. (Tr. 401, 403)

2. Decision of ALJ William G. Kocol

On November 9, 2009, Administrative Law Judge William G. Kocol (ALJ Kocol) issued his decision in *Professional Medical Transport, Inc.*, JD(SF)-38-09, which was enforced by the United States Court of Appeals for the Ninth Circuit. (GCX 37; 79; 80) See *NLRB v. Professional Medical Transport, Inc.*, No. 11-71785 (9th Cir. 2011). In that decision, Respondent was taken to task for abrogating its bargaining obligation by refusing to provide information to the Union, making unilateral changes to Unit employees' working conditions, and illegally withdrawing recognition from the Union. (GCX 37, at p. 9, 13, 15). As part of the remedy, Respondent was ordered to recognize and bargain with the Union in good faith. (GCX 37 at p. 15)

3. Board Settlement Agreement

Based on another set of unfair labor practice charges alleging Respondent's continued violations of the Act, on December 1, 2010, ALJ Kocol approved an informal Board Settlement Agreement signed by the parties. (GCX 34) In that agreement, Respondent agreed to certain terms, including "...allow the Union President or his designee to attend these (bargaining,

grievance, scheduling, operations and safety) meetings and receive their normal wages, if those meetings are scheduled during an assigned shift of the Union President or his designee.”

(GCX 34, Notice to Employees, page 3)

II. ANALYSIS

A. The ALJ Erred in Failing to Find that Respondent’s Refusal to Provide Information Requested by the Union Violated Section 8(a)(5) of the Act

1. Allegations

The Complaint in this matter alleges that Respondent, on several occasions, refused to provide relevant and necessary information to the Union in violation of Section 8(a)(5) of the Act. More specifically, the Complaint alleged that Respondent, on June 29, 2011, failed to provide the following information:

- (1) List of all people disciplined for 10-8 times under two minutes in the last six months, to include their paperwork;
- (2) Compliance reports that Supervisor Ted Beam indicated were completed, broken down by unit, since December of 2010;
- (3) The policy used in discipline indicates that it is a policy mandated by the city contracts. Request the language in the city contracts that mandates 100% out of chute time compliance. (GCX 10)

The ALJ found that the information sought by the Union was presumptively relevant; however, as to Items (1) and (2), the ALJ found that Respondent’s refusal to furnish the information without the Union’s prior commitment to pay \$12.00 per hour to cover purported costs was not unreasonable. As a result, the ALJ failed to find that Respondent’s refusal to provide the information was a violation of Section 8(a)(5) of the Act. (ALJD at 17-18)

Respondent also refused to provide information to the Union that it requested on August 16, 2011. More specifically, the Union requested the following information:

- (1) A copy of the tape and/or video used in the company confiscation of EPCR's from Station 604's bedroom closet by Jim Roeder, Ted Beam and Ralph Vassallo, the day after Barkley was placed on administrative leave;
- (2) A copy of the work order, or any documentation and/or description of notification to the individual and/or company that replaced the lock on that bedroom closet door several weeks prior to your surprise investigation and confiscation;
- (3) A complete list of individuals interviewed or reported any part of the investigation against Barkley;
- (4) A list of unit personnel that have been, previously or currently, placed on administrative leave for five weeks or longer;
- (5) A list of unit members that have been placed on administrative leave for two weeks or longer;
- (6) All documentation concerning Barkley's investigation and discipline. (GCX 13)

In addition to the information requests (1) through (6) listed above, the Union renewed its request for the documents sought by Item 1 on June 29 (the Union had still not received that information and intended to file a grievance over the discipline issued to Barkley and Union Vice President Travis Yates (Yates)). (GCX 13)

The ALJ found that the Union's August 16 request for information related to issues encompassed by the Union's unfair labor practice charges that were pending with the Board. The ALJ further found that given the content and timing of the August 16 information request, Respondent could reasonably have believed that the discipline issued to Barkley and Yates might become the subject of a Board complaint and that such information sought to bolster the Union's charges against Respondent. As a result, the ALJ found that Respondent was privileged in refusing to provide the information requested on August 16 and, as a result, its refusal to do so did not violate the Act. The ALJ made no specific finding regarding the Union's renewal of its June 29 request for information that the ALJ found to be presumptively relevant. (ALJD at 18)

a. The Record Evidence Concerning the June 29 Information Request

The record evidence supports a finding that the request for cost reimbursement by Respondent was unreasonable and a unilateral change, and Respondent's refusal to provide presumptively relevant information was a violation of Section 8(a)(5) of the Act.

More specifically, Barkley and Yates received written warnings on June 28, 2011. (Tr. 456; GCX 51, 56) Both received discipline for having two 911 calls "out of compliance" with language that apparently existed in city contracts. (GCX 51, 56) Further, Barkley and Yates' times were over only by seconds in both incidents. (GCX 52 - 55) Information request Items 1 and 2 seek production of comparative discipline involving other employees. The Union needed this information to determine whether to file grievances over both his and Yates' discipline, and to support the grievance that was eventually filed on or about September 1. (Tr. 459-461; GCX 14) This information was never provided. (Tr. 473-474; GCX 13) Instead, Respondent informed the Union that it would cost Respondent \$12.00 per hour to hire an individual to find the documents the Union requested. (Tr. 47) This figure was presented to the Union without any discussion as to how Respondent came up with the figure or how long it would take Respondent to compile the documents. (Tr. 463-464; GCX 12) Respondent informed the Union that unless it was willing to reimburse Respondent this amount, Respondent would not provide the information. (GCX 12) Respondent made this demand knowing that the Union officers are full-time employees of Respondent and Respondent ceased dues check off for the Union in 2008. (Tr. 47-48, 464)

b. The Record Evidence Concerning the August 16 Information Request

The Union needed the information listed in items 1 through 6 because an unprecedented investigation, administrative leave, and discipline had just been meted out to Barkley and Yates regarding patient care reports being found in Station 604, the work station of several bargaining unit employees. (GCX 67, 69) Items 1 and 2 related to a search that was done of the Field Training Officer's closet in Station 604. (Tr. 519) The Union needed this information for the grievances it was contemplating regarding Barkley and Yates. (Tr. 519-520) Despite Respondent's assertions that no patient care reports from Barkley and Yates were found in the closet, Yates testified that Beam found a patient care report from Barkley and Yates and showed it to Yates. (Tr. 617)

Additionally, FTO John Gary took Yates to the closet the next morning, showed him that he had patient care reports in the closet, and then promptly removed them from the closet. (Tr. 618) This video would show that Respondent discovered patient care reports from other employees, yet those employees were not disciplined. Barkley and Yates had good reason to believe that the key to the closet had been compromised and more individuals than just the Field Training Officers had access to the closet. (Tr. 495; 520) Further, this information would indicate that the discipline of Barkley and Yates was not legitimate and the Union needed to grieve the discipline. (Tr. 520) Therefore, the request for whether the closet had been worked on in the few weeks prior to the closet search would be relevant.

Items 4 and 5 directly relate to comparative discipline of other employees. Barkley was placed on administrative leave for over five weeks. (Tr. 51) The Union was unaware of any other employee ever having been placed on administrative leave for such a lengthy time. (Tr. 521) Whether or not other employees had ever experienced such action is directly relevant

to Barkley's discipline. Additionally, Items 3 and 6 relate directly to the investigation and discipline of Barkley and Yates. (Tr. 521) Of the documents requested, Joy Carpenter (Carpenter), Human Resources Director, only provided what Respondent determined was the investigative file, a file that was incomplete and provided only after the Union had already filed its grievance. (Tr. 522 - 523; GCX 19) As testified by Carpenter, grievances must be filed within 20 days of the discipline. (Tr. 75) The Union had to file its grievance over both Barkley's and Yates' discipline within 20 days, and had to do it without the benefit of having the requested information. (Tr. 523; GCX 14) Therefore, despite Respondent providing its version of the "investigative file," its response on September 16 was untimely and incomplete.

2. Legal Analysis

a. The ALJ Erred in Failing to Find the Refusal to Provide Presumptively Relevant Information Requested on June 29 and Renewed on August 16 a Violation of Section 8(a)(5)

The ALJ was correct when she found that the information requested in Items 1 and 2 on June 29 was presumptively relevant information. The ALJ erred, however, when she found that Respondent's refusal to provide the presumptively relevant information without reimbursement from the Union for hourly wages of the employee tasked with gathering the information was reasonable.

Employers' claims that compliance with the union's request will be, or would have been, burdensome and expensive have had limited success. *Marin Marietta Energy Systems*, 316 NLRB 868 (1995) (employer's unverified assumption concerning cost of compiling health insurance costs insufficient to demonstrate burdensome financial impact of union's information request). The ALJ erred when she found that Respondent's claims of burdensomeness and expense were reasonable. Respondent presented no evidence of burden or expense, other than an

unverified statement in an email from Carpenter that Respondent did not keep “a list” of those records and it would take time to find the records in employees’ personnel files. (GCX 18) The gathering of comparative discipline reports for a limited time period along with routinely-kept² compliance reports of ambulance units for a six month time period is not burdensome.

Respondent presented no record evidence of how this was burdensome, but merely stated it did not have the records in an electronic or computer form. Therefore, there is a lack of any credible evidence that the Union’s request was burdensome either time wise or financially.

Although a union may be required in certain circumstances to pay the reasonable costs of providing copies in accordance with a request for information, the Board has held that the parties should bargain in good faith over which party shall bear such costs. *Food Employers Council*, 197 NLRB 651 (1972). In *Queen Anne Record Sales d/b/a Tower Books*, 273 NLRB 671, enf’d, 772 F.2d 913 (9th Cir. 1985), an employer was found to have violated the duty to bargain when it refused to provide information unless the union paid all copying and administrative expenses in advance. The employer did not specify the copying cost per page, the approximate number of copies, or the administrative hourly expense, and the union had no objective basis on which to decide whether it wished to incur these charges. *Id.*

In the instant case, Respondent announced on July 1 that it was charging the Union \$12.00 an hour to search for the records the Union requested. Respondent gave no alternative to the Union; it simply said: “pay or you don’t get the documents.” Respondent failed to identify how it came up with the \$12.00 hourly rate, how long it would take an administrative employee to search for the records, how many documents existed, or any possible alternatives to providing the actual documents themselves. Respondent made its pronouncement knowing that the Union

² Respondent is required to provide compliance reports to the various cities in which it operates every month. (GCX 34, page 3)

had not collected dues since 2008, that it had no paid officers, and that the only money available to the Union was the wages the Union's employees earned working for Respondent. Respondent may argue that the Union could have proposed an alternative, but this is belied by its email indicating it was crystal clear that this was the amount the Union would be charged if the Union wanted the documents.

b. The ALJ Erred in Failing to Find the Refusal to Provide Presumptively Relevant Information Violated Section 8(a)(5)

The ALJ erred when she held that the Union's request for information about two bargaining unit employees' discipline was properly rejected by Respondent because unfair labor practices were pending at the time of the request. Board precedent does not establish a black letter rule in this regard, and each case must be evaluated under the circumstances presented.

It is well established that Board procedures do not include pretrial discovery and that **in certain cases**, the Board will find that when information is sought that relates to pending Section 8(a)(3) charges, it will not find that a refusal to provide such information violates the Act. *Union-Tribune Publishing Co.*, 307 NLRB 25, 26 (1992) (emphasis added). At the time of the August 16 request, the Union had filed several charges with the Union. On July 14, the Union had filed a charge relating in a general way to discipline that had been issued to Barkley and Yates as well as Barkley's administrative leave. (GCX 1(n)) The charge filed on August 16, the date of the information request, was a charge concerning the treatment of Craig Clifford. (GCX 1(q)) The Union's information request of August 16, came within hours of Barkley and Yates receiving discipline. The situation presented here is distinguished from the *Union-Tribune Publishing Co.* line of cases, as those cases deal with a collective-bargaining relationship, where a collective-bargaining agreement existed between the Employer and the Union, with an established grievance and arbitration procedure. In the instant matter, there is no such agreed-

upon procedure. The parties have a past practice regarding grievances that had occasionally been utilized, but no set agreement. The Union had 20 days in which to present and argue its grievance relating to the discipline of Barkley and Yates, and given that Respondent failed to provide them any documentation during the discipline meetings, the information requested was essential to the Union's role as the collective-bargaining representative of Barkley and Yates.

The information requested by the Union on August 16, was information the Union was entitled to have for representation of two bargaining unit employees who had been disciplined, and CGC respectfully requests that the Board order Respondent to provide the requested information to the Union.

B. The ALJ Erred in Failing to Find that Respondent's Requirement that the Union Pay for Presumptively Relevant Information was a Unilateral Change that Violates Section 8(a)(5) of the Act

1. Allegations

The Complaint alleges that by unilaterally imposing on the Union a \$12.00 per hour fee for an administrative employee to look for presumptively relevant information that the Union requested, Respondent violated Section 8(a)(5).

2. The Record Evidence Concerning the Charge for Reimbursement

After Respondent informed the Union that it would not be providing the presumptively relevant information to the Union, Respondent informed the Union that it would cost Respondent \$12.00 per hour to hire an individual to find the documents the Union requested. (Tr. 47) This figure was presented to the Union without any discussion as to how Respondent came up with the hourly wage or how long it would take Respondent to compile the documents. (Tr. 463-464; GCX 12) Respondent informed the Union that, unless the Union was willing to reimburse Respondent this amount, Respondent would not provide the information. (GCX 12) Respondent

made this request knowing that the Union officers are full-time employees of Respondent and that Respondent ceased dues check off for the Union in 2008. (Tr. 47-48, 464)

Respondent had earlier, on April 15, similarly required the Union to pay \$12.00 per hour for the cost of hiring an individual to find documents the Union requested. (Tr. 63; GCX 18) Again, this requirement was made without notice to the Union and without allowing the Union an opportunity to bargain over the reasons and the costs of Respondent providing information.³ (Tr. 463)

Respondent unilaterally, and without discussion, came up with this \$12.00 an hour fee for an administrative employee to locate relatively simple documents that employers routinely are asked to provide to unions, documents of comparative discipline. Contriving a scheme to charge a Union that has no dues and is only staffed with full-time employees who work 56 hour work weeks for Respondent is simply unreasonable, and constitutes a unilateral change without bargaining, in violation of the Act.

The ALJ also erred in finding that Respondent offered to bargain over this scheme and the Union did not take Respondent up on its offer. Respondent presented the \$12.00 as a *fait accompli*. In fact, its email of July 1 states, “Please acknowledge ICEP’s willingness to reimburse the company for this expense if you want us to proceed with compiling documents responsive to this request.” (GCX 12) That is not a request to bargain; it is a demand that the Union pay Respondent’s expenses in order to get the documents. In one email, of August 17, Respondent adds after the above language “if the ICEP is unwilling to pay for this administrative time, or if you propose a different arrangement, please let us know.” (GCX 13) This email was sent over a month and a half after the July 1 email and four months after Respondent’s April 15

³ On October 11, the ALJ granted a Motion by CGC to amend the Complaint to add an additional date (April 15) to paragraph 8(o). (Tr. 63-64)

unilateral decision to charge the Union for documents in another instance. Any failure by the Union to respond to Respondent's August 17 email with an alternative does not render Respondent's unilateral changes of April 15 and July 1 moot. Respondent is merely asking the Union to agree to make the payment, not offering to bargain over the payment.

3. Legal Analysis

The ALJ erred when she failed to find that Respondent made a unilateral change in wages, hours and terms and conditions of employment when it instituted a reimbursement scheme in violation of Section 8(a)(5). When a union represents a unit of employees, the employer must first notify and give the union an opportunity to request bargaining before the employer effects changes in mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962); *St. Anthony Hospital Systems*, 319 NLRB 46 (1995). Notice must be given with sufficient time to allow a union to request bargaining. "*Automatic Sprinkler Corp.*", 319 NLRB 401 (1995). Inherent in that obligation is an opportunity for the union to bargain in a meaningful manner and at a meaningful time. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 681 (1981). Presenting the union with a *fait accompli* is not timely notice. *Penntech Papers v. NLRB*, 706 F.2d 18, 26 (1st Cir. 1983); *Los Angeles Soap Co.*, 300 NLRB 289 (1990). Respondent's demands to the Union on April 15 and July 1 that it must agree to reimburse Respondent for presumptively relevant documents requested by the Union were presented as a *fait accompli* and, thus, constituted an unlawful unilateral change in violation of Section 8(a)(5) of the Act.

C. The ALJ Erred in Failing to Find that Respondent Changed its “Move Up” Policy in Violation of Section 8(a)(5) of the Act

1. Allegations

The Complaint alleges that Respondent, on December 15, 2010, instituted a unilateral change in the amount of time bargaining unit employees had to “move-up.” Previously, Respondent maintained anywhere from a one minute and thirty second rule to a two minute rule to no rule at all. However, on December 15, 2010, Respondent announced to employees that they would have one minute to “move-up.”

2. The Record Evidence Concerning the “Move Up” Policy

Respondent requires 911 ambulances to “move-up” at various times during their shifts. A “move-up” is an action taken by a 911 ambulance whereby the 911 ambulance moves to another geographical location in the city when the 911 ambulance assigned to that location is not available either due to a call or other reason. (Tr. 105) This allows a 911 ambulance to be in a geographical location available for a 911 call at all times. (Tr. 105-106)

Respondent has never had a written move-up policy concerning the time a 911 ambulance has to “move-up.” (Tr. 411) Respondent has had a policy regarding emergency and non-emergency calls. (GCX 22) Respondent has routinely produced GCX 22 when asked for its move-up policy. (Tr. 66-69; GCX 21) However, Cantelme, the CEO of 911 Operations, testified clearly on at least three occasions that a “move-up” is not a call. (Tr. 104, 106-107) A call comes from the 911 dispatcher at Phoenix Regional Dispatch System and requires the 911 ambulance to respond to a patient. (Tr. 103) As stated by Barkley and Yates, a 911 emergency call requires the 911 ambulance to push the MCT⁴ and respond to the Phoenix Fire Dispatcher in one minute, whereas a 911 non-emergency call requires the same action to be taken in two

⁴ MCT is a computer terminal located in the front of Respondent’s ambulances that communicates with the Phoenix Regional Dispatch Center for 911 calls. (Tr. 84)

minutes. (Tr. 412-413) Those calls are usually for welfare checks or other non-emergency situations. (Tr. 176; 412) A move-up request, on the other hand, comes from Respondent's dispatcher, is not a call, and is not a non-emergency response call. (Tr. 104; 413)

On December 14 and 15, 2010, Respondent held meetings with all employees who work in the 911 system. (Tr. 171-173; GCX 43, 44) During those meetings, it was announced that the "move-up" policy required employees to respond to "move-up" calls within one minute, at all times without exception. (GCX 45) Despite that Lemoine attempted to characterize this directive as only a procedure Respondent would like for everybody to adhere to, the record evidence reflects that on March 21, when Yates asked to see the "move-up" policy, Clonts and Marr presented Yates and Empey the agenda from the December 14 and 15, 2010 meetings. (Tr. 174, 282; 579; 595; GCX 45) Later in the meeting on March 21, Clonts presented Yates with a different document which he stated was the move-up policy. (Tr. 283, 595; GCX 22) Finally, Clonts wrote on Empey's discipline a third version of the policy which provided for a two minute response time. (Tr. 583; GCX 58)

After the March 21 meeting, Clonts called Yates on the phone and informed him that Respondent would be following the move-up policy from the mandatory meetings, held on December 14 and 15, 2010, reported on GCX 45. GCX 45 states that move-ups are to be done in one minute, 24 hours a day, and seven days a week. (GCX 45) This policy is different from any other policy presented as a move-up policy.

Previously, in May 2010, Cantelme had advised the Union of yet another version of the move-up policy. (GCX 23) At that time, Cantelme informed Barkley in an email that employees had to be en-route within one minute of a move-up dispatch and would receive a written reprimand if the crew exceeded one minute and 30 seconds en-route on two or more calls during

a shift. (GCX 23) On December 14 and 15, 2010, Respondent changed the policy from its May 2010 Cantelme version to require employees to complete a move-up within one minute of the call. (GCX 45)

3. Legal Analysis

Respondent has an obligation to provide notice to the Union regarding changes that directly affect the working conditions of bargaining unit employees. A change in a policy regarding an action that bargaining unit employees perform 8-10 times on each shift would be a mandatory subject of bargaining. However, rather than provide notice to the Union and give the Union an opportunity to bargain, Respondent unilaterally announced in mid-December 2010 that the new policy for “move-ups” was to be en-route within one minute, 100% of the time, 24 hours a day, seven days a week. (GCX 45) Despite Respondent’s subsequent protests that this was not the policy, Clonts informed Yates on two occasions in mid-March that this was Respondent’s policy for move-ups.

The ALJ determined that because there was no evidence of actual “enforcement” of the policy — no evidence of any employee receiving discipline for taking over one minute to “move up” and no evidence that Respondent had actually deviated from the two-minute policy that was established earlier — Respondent did not actually change the policy. (ALJD at 18-19) However, Respondent’s attempts to discipline employees Greg Empey and Phillip Maskell demonstrate that Respondent clearly attempted to enforce its new policy against at least two bargaining unit employees. (Tr. 174, 282, 579, 595; GCX 45) The ALJ fails to even mention this incident when she determines that there was no clear evidence of a deviation of the earlier established two-minute policy. In fact, the ALJ appears to agree with Respondent’s contention that any written reference to a one-minute move-up time was erroneous. (ALJ at 18) If this

policy change was erroneous, why was it announced to employees in two meetings on December 14 and 15, 2010? That was not a written reference; that was a verbal announcement by three 911 Regional Managers to all employees who work in the 911 system that the move-up policy is now one-minute. The ALJ fails to even mention those meetings.

The ALJ erred in her decision to dismiss the allegation regarding a unilateral change in Respondent's move-up policy, and CGC respectfully requests that the Board overturn the ALJ's decision and find that Respondent did violate Section 8(a)(5) when it changed its "move-up" policy on December 14 and 15, 2010, and fashion an order requiring Respondent to rescind such change.

III. CONCLUSION

Based on the foregoing, the Acting General Counsel respectfully requests that the Board find that Respondent violated Section 8(a)(1) and (5) of the Act as discussed above, affirm and adopt the ALJ's other findings and conclusions, and to issue an order providing a full and appropriate remedy in this matter.

Dated at Phoenix, Arizona, this 31st day of January 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S CROSS-EXCEPTIONS and ACTING GENERAL COUNSEL'S BRIEF IN SUPPORT OF CROSS-EXCEPTIONS in PROFESSIONAL MEDICAL TRANSPORT, INC., Cases 28-CA-023399, et. al. was served by E-Gov, E-Filing and by E-mail, on this 31st day of January 2012, on the following:

Via E-Gov, E-Filing

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